

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELI WILNER & CO. INC., et al.,

Plaintiff(s),

v.

TITANZ LLC, et al.,

Defendant(s).

23 Civ. 11084 (DEH)

ORDER

DALE E. HO, United States District Judge:

On December 21, 2023, Plaintiffs filed the Complaint, alleging RICO claims against six Defendants. *See* Dkt. No. 1. On December 29, 2023, Defendants The Better Choice Lenders, Inc. and Ezzat (Tom) Ishak filed a motion to dismiss. *See* Dkt. No. 18. On January 19, 2024, Plaintiffs filed the First Amended Complaint (“FAC”), removing all allegations against The Better Choice Lenders, Inc. and Tom Ishak, and a notice of voluntary dismissal with respect to those Defendants. *See* Dkt. Nos. 27, 29. The Court denied the motion to dismiss as moot and so ordered the voluntary dismissal. *See* Dkt. Nos. 31, 32.

An order issued January 3, 2024, scheduled an initial pretrial conference in this matter for March 6, 2024. *See* Dkt. No. 24. That order requires the parties to file a joint status letter and proposed case management plan by February 28, 2024. *See id.*

On February 27, 2024, Defendants Titanz LLC, BTM Holdings, LLC, and Ian Lerner (together, the “Moving Defendants”) filed a motion to dismiss the FAC. *See* Dkt. No. 33. Under Federal Rule of Civil Procedure 15(a)(1)(B), a plaintiff has twenty-one (21) days after the service of a motion under Rule 12(b) to amend the Complaint once as a matter of course. Because Plaintiffs have already amended, they may amend the FAC further only with Defendants’ written consent or the Court’s leave, which should freely be given when justice so requires. *See* Fed. R. Civ. P. 15(a)(2).

The Moving Defendants also filed a letter motion seeking to stay proceedings, including the initial pretrial conference, pending resolution of the motion to dismiss. *See* Dkt. No. 36. The final Defendant, Teddy Ishak, was served on January 18, 2024, but has not appeared or answered the FAC. *See* Dkt. No. 30.

Accordingly, it is hereby **ORDERED** that Plaintiffs shall file a letter by **March 6, 2024**, regarding the Moving Defendants’ request for a stay of proceedings. Defendant Teddy Ishak may, but is not required to, file a letter regarding the Moving Defendants’ request by **March 6, 2024**.

It is further **ORDERED** that the initial pretrial conference is **ADJOURNED** from March 6, 2024, to **March 20, 2024, at 10:30 A.M. EST**. The parties shall join the conference by dialing (646) 453 – 4442 and entering the Conference ID: 743 456 635, followed by the pound sign (#). The parties shall file the joint status letter and proposed case management plan by

March 13, 2024, absent further order from the Court regarding the Moving Defendants' request for a stay of proceedings.

It is further **ORDERED** that Plaintiffs shall file a letter regarding the Moving Defendants' motion to dismiss by **March 8, 2024**. That letter shall state that Plaintiffs intend to rely on the FAC and will oppose the motion. Alternatively, the letter shall state that Plaintiffs seek leave to further amend and shall explain why amendment is appropriate under Rule 15. The letter shall attach a proposed Second Amended Complaint, with all differences between the FAC shown in redline. Plaintiffs will not be given any further opportunity to amend the Complaint to address issues raised by the pending motion to dismiss.

If Plaintiffs do not seek leave to amend the FAC, Plaintiffs shall file their opposition to the motion to dismiss by **March 15, 2024**. The Moving Defendants' reply shall be filed by **March 22, 2024**. If Plaintiffs do seek leave to amend, the Court will address the briefing schedule for any motions to dismiss in a future order.

It is further **ORDERED** that Plaintiffs shall serve this order on Defendant Teddy Ishak and file proof of service on the docket by **March 1, 2024**. If Plaintiffs have been in communication with Defendant Ishak, service may be completed by email or any other mutually-agreeable method. If Plaintiffs have not been in communication with Defendant Ishak, Plaintiffs shall serve him via Federal Express to his last known address.

SO ORDERED.

Dated: February 28, 2024
New York, New York



DALE E. HO
United States District Judge